

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
11/5/03 Item 4.a.

File Number
V03-008

Application Type
Appeal of Director's Decision to Deny a
Development Variance Permit

Council District
6

Planning Area
Central

Assessor's Parcel Number(s)
261-06-030

PROJECT DESCRIPTION

Completed by: ELM

Location: southerly side of Schiele Avenue approximately 600 feet easterly of The Alameda

Gross Acreage: 0.13

Net Acreage: 0.13

Net Density: 8 units per acre

Existing Zoning: CO Commercial
Office

Existing Use: Residential

Proposed Zoning: No change

Proposed Use: Residential

GENERAL PLAN

Completed by: ELM

Land Use/Transportation Diagram Designation
Medium Density Residential (8-16 DU/AC)

Project Conformance:
☒ Yes ☐ No
[] See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: ELM

North: Single-family residential

R-1-8 Residential

East: Single-family residential

R-1-8 Residential

South: Commercial offices and parking facilities

A(PD) Planned Development

West:: Commercial offices and parking facilities

A(PD) Planned Development

ENVIRONMENTAL STATUS

Completed by: ELM

☐ Environmental Impact Report found complete
☐ Reuse of Negative Declaration

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: ELM

Annexation Title: College Park/ Burbank Sunol

Date: 12/8/1925

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Uphold Director's Decision to Deny

Date:

Approved by: _____
☐ Action
☐ Recommendation

OWNER/APPLICANT

Ronald Caselli
742 Bicknell Road
Los Gatos, CA 95030

PUBLIC AGENCY COMMENTS RECEIVED	Completed by: ELM
Department of Public Works None received.	
Other Departments and Agencies None received.	
General Correspondence See Notice of Permit Appeal filed by Ronald Caselli on August 29, 2003.	
ANALYSIS AND RECOMMENDATIONS	

BACKGROUND

The applicant, Ronald Caselli, is requesting a Development Variance Permit to reduce the front setback of a single-family residence to 18 feet. The site is zoned CO Commercial Office; however, it is developed with a legal non-conforming single-family residence used for residential purposes which was constructed prior to the rezoning of the site to CO in 1972. Title 20, Section 20.150.090 of the San José Municipal Code specifies that a legal non-conforming residence in a non-residential Zoning District must conform to the front setback and other development regulations of the R-1-8 Residence District. The R-1-8 District requires a front setback of 25 feet but allows a reduced setback based on conformance with the block averaging provisions of Title 20, Section 20.30.240.

The project site is 0.13 gross acres in area, rectangular in shape, and flat, which is characteristic of the surrounding residential neighborhood. The surrounding properties to the north and east are predominantly residential in nature characterized by single-family residences. The property to the south and west is developed with office buildings and parking facilities.

Permit History

A Special Use Permit Application (File No. SP02-047) requesting construction of a 48 square foot addition to the existing legal non-conforming single-family detached residence was submitted on August 27, 2002. The Permit was approved by the Director of Planning on February 14, 2003. The approved Special Use Permit application allowed a reduced front setback of 21 feet based on the block averaging provisions of Title 20.

On April 15, 2003, the applicant submitted a Preliminary Review Application requesting a decrease in the front setback from 21 feet to 18 feet. The applicant provided detailed information regarding the existing front setbacks of the residential properties on the same block and same side of the street as the subject property. Based on the information submitted, staff concluded that the existing block average is 19 feet 7 inches. Staff informed the applicant that a Development Variance would be required in order to

allow any further reduction of the front setback, and that staff did not believe it would be possible to make the required findings to approve a Variance to allow reduction of the front setback to 18 feet.

On June 18, 2003, the applicant submitted the subject Variance application to reduce the front setback to 18 feet. The Director of Planning determined that findings for a variance to allow a front setback of only 18 feet could not be made and denied the Development Variance Permit on August 29, 2003. On August 29, 2003, the applicant filed a Notice of Appeal of the Director's decision to deny the Development Variance Permit (see attached).

GENERAL PLAN CONFORMANCE

The proposed expansion of the existing single-family residence is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram designation of Medium Density Residential (8-16 DU/AC).

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301 of CEQA this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended in that the project consists of minor modification of an existing small structure.

PUBLIC OUTREACH

Hearing notices were mailed to property owners within 500 feet of the subject property for both the Director's and Planning Commission Hearings in conformance with the Public Outreach Policy. Staff has been available to discuss the project with members of the public, but has received no correspondence or inquiry on this application.

ANALYSIS

Summary of the Appeal

The "Notice of Permit Appeal" asserts that the proposed variance is small in scope, would not be detrimental to the surrounding neighborhood, and would allow architectural enhancement of the house. The appeal further argues that laws are guidelines and not absolutes and that this variance should be approved.

Block Average Provisions of the Zoning Ordinance

Section 20.30.240 of Title 20 specifies that when lots comprising forty percent or more of the frontage on one side of a street between two intersecting streets have been developed with buildings having an average front setback with a variation in depth of not more than 10 feet, the front setback applicable to such lots shall be the existing average setback. This "block average" is calculated based upon the setbacks of those properties fronting onto the same side of the street as the subject residence. No additional exceptions are allowed to further reduce the front setback.

Application of Setback Regulations to 986 Schiele Avenue

The subject site is located on the southerly side of Schiele Avenue between The Alameda and Hoover Avenue. Most of the houses in this area were built in the 1920s and 1930s, prior to the establishment of the current zoning regulations. A total of six residential properties (including the subject property) front onto the southerly side of Schiele Avenue within this block. As shown in the attached diagram based on setback measurements submitted by the applicant, all six properties have been developed with buildings with front setbacks less than 25 feet, and the variation in depth is no more than 10 feet. The average front setback of the six properties is 19 feet, 7 inches. Based on this analysis, staff has concluded that the minimum required front setback for the subject property is 19 feet, 7 inches.

Role of the Development Variance

The Zoning Code provides for a Development Variance process to ensure flexibility where a parcel of land has unique characteristics that would make it unfair to apply the same development regulations applicable to other properties. Such unique characteristics may not involve the personal circumstances of the property owner or changes made to the property while it was located in the current zoning district. This process is designed to treat properties in the same Zoning District equitably, but to prevent unique property characteristics from resulting in inequitable treatment.

Development Variance Provisions of Title 20

In order to approve a Development Variance for the proposed reduction of the front setback to 18 feet, the Planning Commission must make the following findings:

1. The property exhibits special circumstances uniquely applicable to the subject property, such as size, shape, topography, location or surroundings in that the site is characteristic in size and shape with other properties in the immediate area and is generally flat and does not contain any unusual topographic features. Expressly excluded from any consideration are:
 - a. the personal circumstances of the petitioner;
 - b. or of any changes in the size or shape of the subject property made or occurring while the subject property was situate in the zoning district in which it is situate at the time of the filing of the petition, regardless of whether such changes were caused by the petitioner or his predecessors in interest, the strict application of the requirements and regulations prescribed in this Title and referred to in Subdivision A of Section 20.100.1300, deprives such property of privileges enjoyed by other property in the vicinity of an in same zoning district as the subject property, and
2. The Variance, subject to such conditions as may be imposed thereon, will not impair:
 - a. the utility or value of adjacent property or the general welfare of the neighborhood, and;
 - b. the integrity and character of the zoning district in which the subject property is situate.

Analysis of Variance Findings

Special Circumstances

The subject property is rectangular in shape, flat, and approximately 6,012 square feet in size. The property exceeds the R-1-8 Residence District's minimum lot size of 5,445 square feet and can accommodate the R-1-8 development standards, including setbacks. The property is characteristic of residential lots in the surrounding neighborhood in terms of size, topography and shape. The subject property is not unique in terms of size, shape, topography, location or surroundings and does not contain any unique features or special circumstances that would warrant granting a Development Variance for a reduction of the minimum front setback to 18 feet.

Value of Adjacent Property, General Welfare of the Neighborhood, & Integrity and Character of Zoning District

Staff concurs with the applicant that it is unlikely that this very small proposed setback reduction would be detrimental to the general welfare of the neighborhood; however, the granting of a Development Variance where there are no unique circumstances that set the property apart from other properties in the same Zoning District has the potential to undermine the integrity of the Zoning District by affording special benefits to one property that are not available to other properties with similar characteristics.

Conclusion

Based on the above analysis, staff concludes that there is no factual basis to support the findings necessary for approval of this Development Variance Permit and that such approval would be detrimental to the integrity of the R-1-8 Residence Zoning District.

RECOMMENDATION

Planning Staff recommends the Planning Commission uphold the Director's decision to deny Development Variance Permit and include the following facts and findings in its resolution.

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The proposed site is located in the CO Commercial Office Zoning District.
2. This site has a designation of Medium Density Residential (8-16 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
3. The project site is developed with a single-family residence used for residential purposes.
4. The project site is 0.13 gross acres in area, rectangular in shape, and flat, which is characteristic of the surrounding residential neighborhood.
5. The surrounding properties to the north and east are predominantly residential in nature characterized by single-family residences. The property to the south and west is developed with office buildings and parking facilities.

6. The existing residence has been established as a legal non-conforming use.
7. Per Section 20.150.090 of the Zoning Ordinance, a legal non-conforming residence in a non-residential district shall continue to maintain the minimum side and front setbacks as if it were located in an R-1-8 Residence District and shall in addition comply with all other applicable regulations and development standards for lots with a one-family dwelling.
8. The required front setback of the R-1-8 Residence District is 25 feet per Section 20.30.200.
9. However, Section 20.30.240 of Title 20 specifies that when lots comprising forty percent or more of the frontage on one side of a street between two intersecting streets have been developed with buildings having an average front setback with a variation in depth of not more than 10 feet, the front setback applicable to such lots shall be the existing average setback. This block average is calculated based upon the setbacks of those properties fronting onto the same side of the street as the subject residence. No additional exceptions are allowed to further reduce the front setback.
10. A Special Use Permit Application (File No. SP02-047) requesting construction of a 48 square foot addition to the existing legal non-conforming single-family detached residence was submitted on August 27, 2002. The Permit was approved by the Director of Planning on February 14, 2003. The approved Special Use Permit application allowed a front setback of 21 feet based on the block averaging provisions of Title 20.
11. On June 18, 2003, the applicant submitted the subject application to reduce the front setback to 18 feet.
12. The Director of Planning denied the Development Variance Permit on August 29, 2003. On August 29, 2003, the applicant filed a Notice of Appeal of the Director's decision to deny the Development Variance Permit.
13. The proposed modification to the existing single-family residence is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram Medium Density Residential (8-16 DU/AC).
14. There are a total of six residential properties (including the subject property) fronting on Schiele Avenue between The Alameda and Hoover Avenue located on the same side of the street as the subject residence. All six properties have been developed with buildings with front setbacks less than 25 feet, and the variation in depth is no more than 10 feet. The average front setback of the six properties is 19 feet, 7 inches.
15. Based on Section 20.150.090 of Title 20, the required front setback for the subject property is 19 feet, 7 inches.
16. The Zoning Code provides the Development Variance process to ensure flexibility where a parcel of land has unique characteristics that would make it unfair to apply the same development regulations applicable to other properties. Such unique characteristics may not involve the personal

circumstances of the property owner or changes that the property owner has made to the property while it was located in the current zoning district.

17. The property is characteristic of residential lots in the surrounding neighborhood in terms of size, topography and shape. The subject property is not unique in terms of size, shape, topography, location or surroundings and does not contain any unique features or special circumstances that would warrant granting a Development Variance for a reduction of the minimum front setback to 18 feet.
18. The granting of a Development Variance where there are no unique circumstances that set the property apart from other properties in the same Zoning District has the potential to undermine the integrity of the District by affording special benefits to one property that are not available to other properties with similar characteristics.
19. There is no factual basis to support the findings necessary for approval of this Development Variance Permit and that such approval would be detrimental to the integrity of the R-1-8 Residence Zoning District.
20. The environmental impacts of the project will not have an unacceptable negative effect on adjacent property or properties in that:
 - a. Under the provisions of Section 15301(a) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.

FINDINGS

The Planning Commission, based on the facts above, finds the following.

1. The property ***does not*** exhibit special circumstances uniquely applicable to the subject property, such as size, shape, topography, location or surroundings in that the site is characteristic in size and shape with other properties in the immediate area and is generally flat and does not contain any unusual topographic features. Expressly excluded from any consideration are:
 - a. the personal circumstances of the petitioner;
 - b. or of any changes in the size or shape of the subject property made or occurring while the subject property was situate in the zoning district in which it is situate at the time of the filing of the petition, regardless of whether such changes were caused by the petitioner or his predecessors in interest, the strict application of the requirements and regulations prescribed in this Title and referred to in Subdivision A of Section 20.100.1300, deprives such property of privileges enjoyed by other property in the vicinity of an in same zoning district as the subject property, and

2. The Variance, subject to such conditions as may be imposed thereon, **will** impair:
 - a. the utility or value of adjacent property or the general welfare of the neighborhood, and;
 - b. the integrity and character of the zoning district in which the subject property is situate in that the granting of a Development Variance where there are no unique circumstances that set the property apart from other properties in the same Zoning District has the potential to undermine the integrity of the District by affording special benefits to one property that are not available to other properties with similar characteristics.
3. The proposed single-family residence addition is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram Medium Low Density Residential (8-16 DU/AC).

Based upon the above-stated findings, the Planning Commission **denies** the subject Development Variance Permit to reduce the front setback to 18 feet.

Attachments:

Notice of Appeal